

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MARCUS SCOTT,

Petitioner,

v.

ORDER
03-CV-146S

SUPERINTENDENT, GREEN HAVEN
CORRECTIONAL FACILITY,

Respondent.

1. On February 24, 2003, Petitioner commenced this action seeking federal habeas relief under 28 U.S.C. § 2254.

2. On March 19, 2003, this Court referred this matter to the Honorable H. Kenneth Schroeder, Jr., United States Magistrate Judge, for all proceedings necessary for a determination of the factual and legal issues presented, and to prepare and submit a Report and Recommendation containing findings of fact, conclusions of law and a recommended disposition of the case pursuant to 28 U.S.C. § 636(b)(1)(B).

3. In a Report and Recommendation filed on December 21, 2006, Judge Schroeder recommended that Petitioner's Petition for a Writ of Habeas Corpus be denied. This Court has carefully reviewed Judge Schroeder's Report and Recommendation, as well as the pleadings and materials submitted by the parties.

4. No objections to the Report and Recommendation were received from either party within ten (10) days from the date of its service, in accordance with 28 U.S.C. § 636(b)(1)(C) and Local Rule 72.3(a)(3).

5. However, on January 4, 2007, Petitioner filed a Motion to Withdraw his Petition without prejudice. The basis of this motion is that Petitioner's counsel has informed him of additional arguments or claims that may support his petition. This Court notes, however, that Petitioner and his counsel were permitted time, and a further extension of time, to file an Amended Petition on Petitioner's behalf and failed to do so. (Docket No. 22.) As such, Petitioner has previously been afforded a fair opportunity to raise the arguments and claims that he now argues serve as a basis to withdraw his petition. Accordingly, this Court finds no good cause to grant Petitioner's motion.

IT HEREBY IS ORDERED, that this Court accepts Judge Schroeder's December 21, 2006 Report and Recommendation (Docket No. 23) in its entirety, including the authorities cited and the reasons given therein.

FURTHER, that Petitioner's petition seeking federal habeas relief (Docket No. 1) is DENIED for the reasons set forth in the Report and Recommendation.

FURTHER, that because the issues raised in the petition are not the type that a court could resolve in a different manner, and because these issues are not debatable among jurists of reason, this Court concludes that Petitioner has failed to make a substantial showing of the denial of a constitutional right, 28 U.S.C. § 2253(c)(2), and accordingly, a Certificate of Appealability is DENIED and shall not issue.

FURTHER, that this Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal would not be taken in good faith.

FURTHER, that the Clerk of the Court is directed to take the necessary steps to close this case.

SO ORDERED.

Dated: January 23, 2007
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge